Trustee Indemnity Insurance

We get asked about Trustee Indemnity Insurance a lot. Mostly, to put it bluntly, because Shedders want to know if there's any point. We've teamed up with the pros at Ladbrook Insurance to answer all of your burning questions, and ones you didn't know you had. We consider some of the risks that Trustees face and examine whether Trustee Indemnity Insurance is of any value to those that give their time to run Sheds. We will look at whether the legal structure of your Shed (e.g. CIO) limits your exposure and get to the root of which Sheds should consider purchasing this insurance cover.

What is Trustee Indemnity cover?

Trustee Indemnity Insurance provides some peace of mind for non-profit organisations because, to some degree, it protects members of the board if they are personally sued as a consequence of mismanagement. Board members (Trustees or committee members) might be concerned that they could be personally and financially liable from their Trusteeship, particularly in a climate where charity regulation is increasing and litigation is more common.

We will look at the extent to which Sheds should be concerned and look for factors that might make some Trustees at higher risk of litigation than others.

What is covered under a Trustee Indemnity policy?

Trustee Indemnity Insurance provides a wide range of cover for both the individual liability for the members of the board and (in many cases) additional cover for the charity itself. We have provided some examples of situations where a Trustee Indemnity policy may protect a charity, at the bottom of this guide.

Even if any allegation brought against the Trustees of your Shed is entirely baseless, the cover still proves valuable as it covers the cost of your legal defence.

We have seen examples of litigation that soon fizzle out with a robust defence. In these, often stressful situations, it is reassuring to know that professional, experienced legal support will represent your interests.

Trustee Indemnity meets costs involved not just in cases of wrongful acts, but often also of 'investigations' for example, by the Charity Commission and HMRC.

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Who is classified as a Trustee?

Board or committee members do not have to be designated as such to benefit from Trustee Indemnity cover, it normally extends to any senior management of a charity too.

How can Trustees find themselves personally liable?

Many people do not realise the potential financial exposure connected to their responsibilities as a Trustee. Both the Charity Commission and UK courts can order a Trustee to make payment for financial losses suffered if the Trustee has not acted with suitable care in discharging their duties.

In reality, claims are few and far between.

As long as a Trustee has acted in good faith and can be shown to have acted reasonably, successful litigation is, thankfully, not that common. Indeed, for any claim to be brought, it has to be seen as clear to a reasonable person that impropriety or negligence has occurred.

...but we have 'limited liability'?

A common misconception is that by structuring the legal framework of the Shed to limit the financial obligations of Trustees, means that there is no residual risk.

Many voluntary sector organisations are making or considering the decision to become incorporated in order to protect the Trustees should the organisation become insolvent.

Mistakenly, a number of Trustees feel that by incorporation, their own personal liability is entirely limited. This is not the case. Incorporation can actually impose additional duties and liability in some areas. The directors of the corporation (who will be the same as charity Trustees) will not be insulated from their corporation's own direct responsibilities. They are still potentially held personally liable.

It is key to remember that limited liability refers to a director's liability back to the organisation. This is irrelevant if an individual is suing a director directly.

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Should your Shed buy Trustee Indemnity Insurance?

Claims for Trustee Indemnity are infrequent, certainly less frequent than claims for property damage or against public or employer liability.

Not every Shed, whether incorporated or unincorporated, should buy Trustees indemnity insurance.

The argument put forward by the Charity Commission is that each organisation should attempt to limit the chances of any potential loss or wrongdoing. In theory, this would negate the need for cover, as long as your risk management is effective. In reality, while this approach will reduce the chances of needing this cover significantly, even highly organised charities with sophisticated risk mitigation might still consider a residual need for some financial protection for Trustees.

In an increasingly litigious society, where Trustees of charitable organisations are not immune from claims being made against them, we recommend this is an area of cover that your Shed committee considers. We would also stress that the infrequency of claims coupled with the relative complexity of your organisation might mean that choosing not to cover personal liability will be the right call for many committees.

What do you mean by relative complexity?

If you read the claims examples provided at the end of this guide, it could be suggested that the more complex an organisations activities and the more assets it owns, the greater the need for this cover.

For example, maybe your Shed owns property or plans on subletting part of the Shed; perhaps you are employing staff or embarking on a large project involving contracts, planning permission or similar. Equally if you had more complex tax arrangements or perhaps significant funding for specific projects, the risk to Trustees would increase too.

As a final consideration, your group might also think about Trustee recruitment. Finding Trustees with appropriate skills and experiences can sometimes be a challenge and organising appropriate insurance protection might provide comfort for potential Trustees.

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How much cover should our Shed get?

If you do decide to purchase cover, there is the question of how much. There is no right or wrong about how much cover to buy. Each charity should assess their risks and that exercise should give an indication of the sorts of claims that could be brought against Trustees.

As an experienced charity insurance broker, Ladbrook can also provide you some statistics (on request) to indicate what other similar size organisations have covered. Of course, each organisation is different and what another charity has done is not necessarily right for your own organisation.

Example Claims

Claim for Alleged Trespass:

The neighbouring landowner to the trust claims that recent constructions carried out by the trust infringed on their property. The trust claims that documents from the 18th century show that the previous owner passed the land over to them, whereas the claimant declares that the land never legally belonged to the previous owner. The claim was upheld and that the claimant is indeed the legal owner of the disputed property. The Trustees will be responsible for damages and for restoring the land to its former condition. Costs were met by their policy.

Claim for Alleged Defamation:

Following publication of an article, the charity Trustees were sued for defamation by another charity with similar objectives. The claimant stated that certain statements made in the article were untrue and gave a false representation of the charity. The matter was eventually settled out of court with considerable fees being paid.

Claim for Alleged Breach of Authority:

A claim was made against an individual Trustee by one of the charity's employees. Before the charity ceased operating the Trustee had indicated that employees would receive an enhanced redundancy payment, which was in breach of his authority. As a result, several

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employees had made financial decisions based on that statement, and hence ran up costs to cancel these arrangements.

Claim for Alleged Denial of Access:

A claim was made against the Trustees as they had sub-let a section of their premises to another organisation. This had been done without consultation to the landlord and broke the conditions of the lease on the property, and subsequently the landlord ordered the eviction of the sub-tenants. The evictees brought a claim against the Trustees for denial of access.

Claim for Dishonesty of a Trustee:

A claim was made by a charity, which had suffered a loss in excess of £12,000. Due to poor internal controls, one of its Trustees managed to fraudulently withdraw substantial funds. Although it is an unpalatable risk to consider, unfortunately, Trustee fraud is a rare but potentially very damaging risk to a charity.

Claim for Libellous Action:

A claim was made against the Trustees for alleged slander. After initial discussions the allegation was retracted and an apology offered. The solicitor's fees, which had been incurred were settled for over £1,500.

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